UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-- v. --

MAHMOUD THIAM,

Defendant.

17 Cr. 47 (DLC)

GOVERNMENT'S SENTENCING MEMORANDUM

JOON H. KIM
Acting United States Attorney
Southern District of New York
Attorney for the United States of America

SANDRA MOSER
Acting Chief, Criminal Division
Fraud Section
United States Department of Justice

Christopher J. DiMase
Elisha J. Kobre
Assistant United States Attorneys

Lorinda Laryea, Trial Attorney
Criminal Division, Fraud Section

- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-- v. --

MAHMOUD THIAM,

Defendant.

17 Cr. 47 (DLC)

GOVERNMENT'S SENTENCING MEMORANDUM

The Government respectfully submits this sentencing memorandum in advance of the sentencing of Mahmoud Thiam, which is scheduled for August 25, 2017 at 11:30 a.m. The Government respectfully requests that the Court impose a sentence of imprisonment within the United States Sentencing Guidelines ("Guidelines" or "U.S.S.G") range of 151 to 188 months' imprisonment, as calculated below, which is necessary to comply with the purposes of sentencing set forth in 18 U.S.C. § 3553(a), and particularly to reflect the seriousness of the offense and to afford adequate deterrence to criminal conduct.

Thiam's acceptance of bribes in exchange for abusing his powerful position as Guinea's Minister of Mines is the very form of rampant official corruption that has contributed to dire poverty in Guinea and elsewhere in Africa, despite the vast natural resources those countries possess. Thiam then laundered the proceeds of this corruption through sophisticated banking transactions and a web of lies, to fund his lavish lifestyle in the United States and elsewhere, including the purchase of a $3.75 million estate in Dutchess County, New York. Following his arrest, Thiam told multiple lies to the FBI, and later again to this Court and the jury during his testimony at trial.

The Court should also order forfeiture in the form of the proposed Order of Forfeiture attached as Exhibit A hereto.

I. The Indictment and Summary of the Evidence at Trial

On or about January 18, 2017, a grand jury in this District returned an indictment, 17 Cr. 47 (the "Indictment"), charging Thiam with, in Count One, transacting in criminally derived property, in violation of Title 18, United States Code, Section 1957 and, in Count Two, money laundering, in violation of Title 18, United States Code, Section 1956. Trial began on April 24, 2017 and concluded on May 3, 2017 when the jury, following less than one day of deliberations, returned its guilty verdict on both counts of the Indictment.

A. Thiam's Bribery Scheme

At trial, the Government proved beyond a reasonable doubt that, while serving as Guinea's Minister of Mines in 2009 and 2010, Thiam accepted $8.5 million in bribes from executives of China International Fund ("CIF") and China Sonangol (collectively, the "Chinese Conglomerate") and laundered those proceeds into the United States and elsewhere, including to conceal the use of those bribe proceeds to purchase a $3.75 million estate in Dutchess County. Evidence at trial showed the following:

While Guinea possesses vast natural resource wealth, including billions of dollars worth of bauxite, iron ore, gold and diamonds (Tr. 107-08), about 60% of Guineans live below the poverty line, the average Guinean citizen lives on less than two dollars per day, and only about 7% of the Guinean population has access to plumbing and electricity. (Tr. 109-10, 328-30).[1]

---

[1] "Tr." refers to the trial transcript in this case. "GX" refers to a government exhibit received in evidence at trial. "Def. Br." refers to Thiam's sentencing submission dated July 28, 2017.

In 2009, Thiam, a United States citizen, became Minister of Mines and Geology of the Republic of Guinea (the "Minister of Mines"). (GX 1414; Tr. 105, Tr. 322). As Minister of Mines, Thiam had substantial powers relating to mining in Guinea, including setting Guinea's mining policy, promoting the development of the mining sector, and granting mining licenses and concessions. (Tr. 127-30).

In the spring of 2009, the Republic of Guinea began to negotiate with CIF regarding a potential investment by CIF in the Republic of Guinea. (Tr. 104, 321-22, 336-338). CIF was headed by an individual named Sam Pa. (Tr. 133, 338). The rights to be awarded to CIF included valuable rights to natural resources in the Republic of Guinea, including vast reserves of bauxite, iron ore, gold and diamonds. (Tr. 107-08). Negotiations between Guinea and CIF culminated with the signing, on or about October 10, 2009, of a "Shareholder's Agreement," which was the final and formal agreement between the Republic of Guinea and the Chinese Conglomerate. (GX 408; Tr. 159-60, 363). Through this agreement, the Chinese Conglomerate received "full exclusivity" over a wide range of sectors of the Guinean economy and "the right to be the first and strategic shareholder" in a national mining company that would possess practically all of Guinea's mining sector. (GX 408, §§ 4.2.9, 4.4; Tr. 164-65, 172).

On September 25, 2009 – approximately two weeks before the signing of the Shareholder's Agreement – Sam Pa, the Chief Executive Officer of the Chinese Conglomerate, with whom Thiam was negotiating – transferred $3 million into a bank account in Hong Kong in Thiam's name (the "Thiam Hong Kong Account") (GX 305A-D, 1002). Thiam had opened the Thiam Hong Kong Account the previous day, September 24, 2009, at a bank located in the same building where the Chinese Conglomerate was headquartered. (GX 301A). Five days later, on September

30, 2009, Sam Pa was reimbursed by the Chinese Conglomerate for this $3 million transfer. (GX 305D, 1002).

Between March and November 2010, Thiam received an additional $5.5 million from Sam Pa and other executives of the Chinese Conglomerate. (GX 305E-S). Like the initial transfer, the initial source of funds for each of these transfers was the Chinese Conglomerate, (GX 305H, Q, M), which funneled the money to Thiam through three of its executives.

Between September 2009 and August 2011, Thiam conducted numerous wire transfers of bribe proceeds from the Thiam Hong Kong Account to his own accounts in the United States and to other transferees. Thiam spent the bribe proceeds on, among other things, personal expenses, luxury items and expensive vacations. (GX 301B-C, 1001). These included high-end renovations on the Dutchess County estate, tuition at exclusive private schools, a ski vacation and skiing lessons, and a Steinway grand piano. Thiam also transferred $375,000 in bribe proceeds to a company in Malaysia to conceal the source of these proceeds, which he used to purchase – through a parallel wire transfer from a Mozambique-based company – the Dutchess County Estate. (GX 201-205, 205A, 205C, 301C, 1005; Tr. 498-510).

In exchange for these bribe payments from executives of the Chinese Conglomerate, Thiam used his official position as Minister of Mines to promote the award of Guinea's enormously valuable natural resources to the Chinese Conglomerate. As the Guinean official primarily responsible for directly negotiating with individuals from CIF the terms of its investment, (Tr. 105), Thiam was well-positioned to promote the interests of the Chinese Conglomerate. Thiam did so through, among other things, his membership in a three-person commission established by presidential decree to negotiate with CIF, (Tr. 321-22, 334-64); touting the benefits of the deal at ministerial meetings, (Tr. 131-89); leading a "technical committee" which reviewed drafts of agreements Thiam conveyed from the Chinese Conglomerate. (GX 401, 402, 408; Tr. 145-73, 355-71); heading up a delegation to Singapore in July 2009 to negotiate with executives of the Chinese Conglomerate, (GX 405, 506; Tr. 149, 368); and initialing each page of the "Shareholder's Agreement," thereby giving his official imprimatur on the agreement. (GX 408; Tr. 159-60, 363).

Evidence at trial showed that the provisions of the Shareholder's Agreement, negotiated by Thiam, were highly disadvantageous to the Republic of Guinea. Among other things, the Shareholder's Agreement gave the Chinese Conglomerate "full exclusivity" over a wide range of sectors of the Guinean economy, including "diamond, iron, bauxite, gold, oil and gas and mineral concessions." (GX 408, § 4.2.9; Tr. 164-65). Under this exclusivity provision, "[t]he sovereign rights of the Republic of Guinea regarding its natural resources were practically removed from Guinea." (Tr. 166). The Shareholder's Agreement also called for the creation of a National Mining Company ("NMC"), through which the Chinese Conglomerate would receive an "incredible and enormous amounts of rights and benefits." (GX 408, § 4.4; Tr. 172).

B. Thiam's Lies to Banks in Hong Kong and the United States to Conceal His Bribery Scheme

Evidence presented at trial showed that Thiam lied repeatedly to conceal his bribery scheme. In applying for the Thiam Hong Kong Account, which he used to receive the bribes, Thiam lied to the bank by claiming that he was a "consultant" with an income of $200,000 per month. (GX 301A). Thiam was, in reality, then Guinea's Minister of Mines with minimal legitimate income. Thiam further concealed his status by reporting his nationality to the bank as "France" and by providing the bank with a French passport rather than his valid Guinean diplomatic passport or his U.S. passport. (GX 301A, 1414).

Thiam also lied repeatedly to two banks in the United States to which Thiam transferred the bribe proceeds. Thiam first falsely told a compliance officer with JPMorgan Chase Bank, where Thiam held an account (the "Thiam Chase Account"), that the funds in the Thiam Hong Kong Account were from business transactions over the years with an individual named Baker Al-Sadi. (GX 535; Tr. 79-81). None of those funds were from Al-Sadi; they were almost all from the Chinese Conglomerate. (GX 1006). Prior to sending an e-mail with this false information, Thiam forwarded it to Al-Sadi to obtain Al-Sadi's opinion on the plausibility of the lie. Al-Sadi replied, in pertinent part, "Looks fine if they don't dig too deep." (GX 534). After Thiam replied positively, Al-Sadi suggested that Thiam "[b]uy some time by saying you asked me to send them to you and we'll see if they follow up." (GX 534).

On or about June 7, 2010, shortly after Chase closed the Thiam Chase Account, Thiam opened a new account at HSBC bank in Manhattan (the "Thiam HSBC Account"). During an account opening interview, Thiam falsely told an HSBC banker that he was employed by a natural resources company named "AMER," which was based at Thiam's Manhattan apartment, and did not mention that he was, at the time, Guinea's Minister of Mines. (Tr. 612-14). HSBC only discovered Thiam's official status when, by happenstance, a bank employee saw Thiam being interviewed on CNBC. (Tr. 576-77). During a follow-up interview at HSBC on July 19, 2010, Thiam admitted to the HSBC banker that he was the Minister of Mines, but this time falsely stated that the funds in the Thiam Hong Kong Account were from savings from past employment and the proceeds from the sale of land in Africa. (GX 102F, G; Tr. 584, 636). This was plainly false. (GX 1006).

C. Thiam's Lies During His Interview by FBI Agents and During His Testimony at Trial

During a videotaped post-arrest interview conducted on December 13, 2016, Thiam continued to lie to hide the bribery scheme, stating – contrary to the stories Thiam had told to Chase and HSBC – that the funds in the Thiam Hong Kong Account were a personal "loan" from

Sam Pa, albeit one with no terms, documentation, interest rate, or repayment date, and one that he never actually repaid. (GX 801A). Among the other lies Thiam told during the post-arrest interview were that the Thiam Hong Kong account was funded by "fifty" people who owed him money and that the Shareholder's Agreement had been "signed and done a long time" before Thiam received the payment from Sam Pa. (GX 801A). Those statements were also plainly false.

During his testimony at trial, Thiam admitted to telling many of these lies and reiterated his false story that the payments from the Chinese executives were a personal loan. Thiam also told a series of additional lies during his testimony. For example, Thiam first testified that he did not take a salary as Minister of Mines, (Tr. 715-717), but later admitted that it was paid to him and that he reported the income in his tax returns. (Tr. 821-23). When confronted with the fact that he failed to report any of the initial $3 million he received from Sam Pa on his 2009 tax return, Thiam testified that he was "not careful" when he filed his tax returns. (Tr. 806). Thiam also admitted that, contrary to testimony that the payments were a loan, he nonetheless listed that money on his 2010 tax return as income from "consulting." (Tr. 808-10). And despite the evidence presented about Thiam's use of the bribe proceeds on luxuries and the Dutchess County estate, Thiam continued to insist that he needed the loan from Sam Pa to "feed [his] family." (Tr. 856).

II. The Presentence Investigation Report and the Advisory Sentencing Guidelines Range

The Government agrees with the Guidelines calculation set forth in the PSR with the exception that the Court should, in addition, impose a two-level enhancement pursuant to U.S.S.G. § 3C1.1 for obstructing justice. This enhancement applies here because Thiam lied during his testimony at trial.

As set forth in the PSR, pursuant to U.S.S.G. § 2S1.1(a)(2), Thiam begins with a base offense level of 8 plus the number of offense levels from the table in § 2B1.1 corresponding to the value of the laundered funds. The value of the laundered funds is more than $3.5 million and not more than $9.5 million. This yields a base offense level of 26. Pursuant to U.S.S.G. § 2S1.1(b)(2)(B), two offense levels are added because Thiam was convicted under 18 U.S.C. § 1956. Pursuant to U.S.S.G. § 2S1.1(b)(3), two additional offense levels are added because the offense involved sophisticated laundering. Pursuant to U.S.S.G. § 3B1.3, two additional offense levels are added because Thiam abused his position of public trust, namely Minister of Mines, in a manner that significantly facilitated the commission of the offense.

The Court should also impose a two-level enhancement pursuant to U.S.S.G. § 3C1.1 because Thiam willfully attempted to obstruct the administration of justice with respect to the instant investigation and prosecution. Thiam lied repeatedly during his testimony at trial, including falsely testifying among other things: (1) the payments from the Chinese executives were interest-free, undocumented, loans with no repayment date, (2) he did not take a salary for his job as Minister of Mines, (3) he was "not careful" when he reported the bribes on his 2010 tax return as income from "consulting" and (4) he needed the bribe money to feed his family. Each of these lies was material and Thiam made them intentionally to subvert the criminal prosecution against him.

Accordingly, the Court should find that Thiam's total offense level is 34. As Thiam is in Criminal History Category I, his Guidelines range is 151-188.[2]

---

[2] In a letter to the Court dated July 12, 2017, Thiam objects to this calculation, asserting that "only the $3.5 million dollars allegedly transferred *to a US Bank account* should be used in calculating any sentencing guidelines." (emphasis in original). Thiam's objection is irrelevant since, even if only $3.5 million of the bribe proceeds was considered, this would result in the same Guidelines calculation. *See* U.S.S.G. § 2B1.1(J), (K) (providing for an 18-level increase where the loss was more than $3.5 million but not more than 9.5 million).

III. The Court Should Impose a Sentence Within the Advisory Guideline Range

The Court should impose a sentence within the Guidelines range of 151 to 188 months' imprisonment.

Thiam's offenses of laundering bribe proceeds he received in violation of Guinean law are at the heart of what Congress sought to eradicate in the USA PATRIOT ACT by amending the list of specified unlawful offenses for money laundering crimes to include an offense against a foreign nation involving "bribery of a public official." 18 U.S.C. § 1956(c)(7)(B)(iv). "The legislative history of 18 U.S.C. § 1956(c)(7)(B) makes clear that Congress added this offense as a specified unlawful activity in the 2001 Patriot Act in order to 'send a strong signal that the United States will not tolerate the use of its financial institutions for the purpose of laundering the proceeds of such activities.'" *United States* v. *All Assets Held at Bank Julius Baer & Co.*, 571 F. Supp. 2d 1, 10 (D.D.C. July 9, 2008) (quoting H.R. Rep. No. 107-250 (2001)).

By laundering millions of dollars in bribe proceeds into the United States and elsewhere, including for the purchase an estate in Dutchess County, Thiam used the United States and its financial institutions to stash – and live a lavish lifestyle from – the corrupt fruits of his foreign bribery scheme. Through this conduct, Thiam worked to "undermine the integrity of United States

---

Thiam's objection is in any event without merit because Thiam is, and was at the time of the offenses, a naturalized citizen of the United States. Under these circumstances, neither of the offenses for which Thiam was convicted require that the transactions involve a bank in the United States. *See, e.g.*, 18 U.S.C. § 1956(f) ("There is extraterritorial jurisdiction over the conduct prohibited by this section if — (1) the conduct is by a United States citizen . . .; and (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000"); 18 U.S.C. § 1957(d) (prohibiting transactions in criminally derived property of a value greater than $10,000 derived from specified unlawful activity even where "the offense . . . takes place outside the United States . . . but the defendant is a United States person").

financial institutions and of the global financial and trading systems upon which prosperity and growth depend." USA PATRIOT ACT, Section 302(a)(3).

The harm contemplated by Thiam's corrupt conduct cannot be overstated. Through his scheme, Thiam sought to deprive some of the poorest people on earth of the natural resource wealth they possess and which should inure to their benefit, simply in order to line his own pockets. For \$8.5 million in bribes, Thiam took actions that would have deprived the Guinean population of literally billions of dollars in mineral wealth and other economic advantages.

Unfortunately, corruption of this sort – if not of this scale – is widespread in many countries, particularly in Africa where, despite substantial wealth of natural resources, so many live in dire poverty. Efforts to combat such corruption include the United Nations Convention Against Corruption ("UNCAC"). The foreword to UNCAC describes some of the self-evident harms of such corruption:

> Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.
>
> This evil phenomenon is found in all countries. . . but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.

(Foreword, United Nations Convention Against Corruption).

Thiam's conduct was further aggravated by several factors:

- **Thiam abused the trust placed in him by the Republic of Guinea**. As Minister of Mines, Thiam was given enormous authority, which he was obligated to exercise in the interests of the people of that country rather than his own interests. Instead, Thiam used his power to enrich himself at the expenses of the people he was appointed to serve. Thiam's abuse of his authority is particularly egregious given his Guinean nationality and citizenship. Rather than using his talents and experience to benefit the citizens of his impoverished place of birth, he used his official position to deprive the citizens of Guinea of their natural resource wealth.

- **Thiam lied repeatedly to banks and to the Internal Revenue Service ("IRS") to conceal his bribery and money laundering scheme.** Thiam lied to a bank in Hong Kong and two banks in the United States about his official position and the source of the bribe proceeds to facilitate his scheme. Thiam also lied to the IRS, reporting the bribes as fees from "consulting" to conceal their true source, even though doing so resulted in substantial tax liabilities. Thiam's multiple lies to banks and the IRS evidence a sophisticated plan to conceal his scheme. This is particularly so given Thiam's high level of education and years of banking experience.

- **Thiam concealed his use of bribe proceeds to purchase the Dutchess County Estate using a complex series of transactions involving corporations in foreign countries**. Rather than simply transferring money from the Thiam Hong Kong Account to the United States for the purchase of the Dutchess County Estate, Thiam transferred $375,000 first to a foreign company in Malaysia in exchange for a $375,000 wire from yet a different company in Mozambique toward the purchase of the house. This complex set of transactions, which served no legitimate business purpose, was intended to conceal Thiam's use of the bribe proceeds to purchase the Dutchess County Estate.

- **Thiam obstructed justice by lying during his testimony at trial**. At trial, Thiam lied repeatedly to evade liability for his crimes, including reiterating his patently false story that the payments from the Chinese executives were a personal loan; he did not take a salary as Minister of Mines; he was "not careful" when he filed his tax returns; and that he used the bribe proceeds to "feed [his] family." Thiam, of course, had every right to testify in his own defense, but having done so, he was obligated to tell the truth. His intentional lies under oath constitute obstruction of justice.

Thiam seeks a below-Guidelines sentence primarily on the ground that his conduct represents an "isolated" incident in an otherwise law abiding life. But the conduct here – which Thiam planned and executed over the course of two years – was of great significance. Thiam's appointment as Minister of Mines represented an extraordinary grant of power that, used properly, could have vastly improved the lives of millions of Guineans. Instead, Thiam abused his power and authority to the detriment of those he claimed he wanted to help.

Thiam also asserts that the agreement with the Chinese Conglomerate was endorsed by other officials in Guinea, which received some funds as part of the agreement. As an initial matter, it was no less a crime for Thiam to solicit or receive bribes in exchange taking official actions he or others may have believed were in Guinea's interest. In any event, the evidence at trial showed that the Prime Minister of Guinea and others expressed serious concerns about the agreement to Thiam and others. These concerns were formalized in a directive by the Council of Ministers to make certain changes to the agreement. This directive was not heeded.[3] Thus, none of Thiam's arguments thus merit a below Guidelines sentence.

The crucial sentencing factor here is deterrence, because while corruption in Africa is rampant and causes enormous harm, investigating and prosecuting crimes relating to foreign bribery are difficult, costly, and time intensive – and therefore fairly rare.[4] A substantial sentence, within the Guidelines range, is necessary to deter those who, like Thiam, would seek to use the instrumentalities of the United States financial system in furtherance of foreign bribery.

[3] Thiam's case is nothing like *United States v. Samuel Mebiame*, an Eastern District of New York case. *First*, Mebiame was a low-level sales agent who worked for, and paid bribes on behalf of, a large investment concern. Thiam, on the other hand, was a high-level government official who abused his vast powers in exchange for bribes. *Second*, unlike Thiam, Mebiame was charged with one count of conspiracy to violate the Foreign Corrupt Practices Act ("FCPA"), in violation of 18 U.S.C. § 371, an offense that carried a maximum five year term of imprisonment. Thiam, by contrast has been convicted of two counts of money laundering, each of which carries a twenty year maximum term of imprisonment. Indeed, Mebiame's sentencing Guidelines range was 60 months, while Thiam's Guidelines range is 151 to 188 months' imprisonment. *Third*, as the Court pointed out at Mebiame's sentencing, Mebiame freely admitted to his conduct when confronted by law enforcement. Mebiame also provided useful information to the Government's investigation, and subsequently accepted responsibility for his crimes and pled guilty. Thiam, by contrast, has not accepted responsibility and did nothing to assist the Government's investigation. Instead, Thiam has repeatedly lied about his conduct, for years, including to banks, the IRS, the FBI and this Court.

[4] Evidence in such cases – including records and witnesses – are generally located in multiple foreign countries, some of which might not assist U.S. authorities. In this case, for example, the Government issued Mutual Lateral Assistance Treaty ("MLAT") requests to multiple foreign jurisdictions and agents traveled to Guinea on two occasions to interview witnesses.

Conclusion

For the reasons stated above, the Court should impose a sentence within the advisory Guidelines range of 151-188 months' imprisonment.

Dated: New York, New York
August 4, 2017

Respectfully submitted,
JOON H. KIM
Acting United States Attorney

By: ____/s/______________________
Christopher J. DiMase
Elisha Kobre
Assistant United States Attorneys
Telephone: (212) 637-2433 / 2599

SANDRA MOSER
Acting Chief, Criminal Division, Fraud Section
United States Department of Justice

By: ____/s/______________________
Lorinda Laryea
Trial Attorney
Telephone: (202) 353-3439